IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.7908 OF 2000

1. A. Ramalingam
2. A. Ramasamy
3. Dr.R.A. Ramalingam
4. A. Balakrishnan .. Petitioners

-Vs-

1. Special Tahsildar (L.A)
Neighbourhood Scheme
Salem.

2. State of Tamil Nadu,
Rep. by its Commissioner &
Secretary to Government,
Housing and Urban Development
Department, Madras-9. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioners 1 &4: Mr.M.Md. Ibrahim Ali

For Petitioners 2 &3: Mr.S.V. Jayaraman
Senior Counsel for
Mr.V.C. Palanichamy

For Respondents : Mr.S. Gomathinayagam
Special Govt. Pleader

:J U D G M E N T

The prayer in this writ petition is to issue a writ of certiorarified mandamus for quashing the award No.1/95-96, dated 7.7.1995, in so far as it relates to S.No.116/2B, 117/3A, 118/4C, 118/5A, 117/3 and 11 8/4.

2. Four petitioners had earlier filed separate writ petitions, namely W.P.Nos.4273, 4272, 4271 and 4274 of 1985, challenging the land acquisition proceedings. Those writ petitions were dismissed on 25.1.19 94 and Writ

Appeal Nos.583, 670, 584 and 591 of 1994 were dismissed on 16.10.1997. The issue in question in those writ petitions was the so called defect in Section 4(1) Notification and enquiry conducted under Section 5-A of the Land Acquisition Act. A contention was advanced in the appeals to the effect that the award having not been passed within the period of limitation as envisaged under Section 11, the land acquisition proceedings has become invalid. This question was however specifically left open and it was observed :

 . . . It is this reason, we do not propose to go into this question and leave it open to the Government to pass orders in accordance with law. If the appellants and the petitioner are aggrieved by any such order passed beyond the period of limitation, it is always open to them to agitate the matter.

As a matter of fact, it now transpires that while the writ appeals were pending, the Special Tahsildar, the Collector under the Land Acquisition Act, had passed an award dated 7.7.1995. In the present writ petition, such an award is being challenged.

3. Two grounds have been raised in support of the writ petitioners. First contention is to the effect that before passing the award, the Collector has not obtained prior approval of the appropriate authority as envisaged under Section 11(1) of the Act. The aforesaid provision is to the following effect :-

 11. Enquiry and award by Collector.- (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land at the date of the publication of the notification under Section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of -

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(ii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him;

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf :

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) to (4) . . . .

4. In the present case, the question of applicability of first proviso arises for consideration. It appears that the Government had issued notification G.O.Ms.No.2003 dated 13.12.1984 under the first proviso of Section 11(1). The notification authorises the Commissioner of Land Administration to approve every award in which total compensation to be allowed exceeds ten lakhs rupees; and the District Collector to approve every award in which the total compensation to be allowed does not exceed ten lakhs rupees. It seems that subsequently a further notification has been issued raising the limit to twenty lakhs rupees so far as the Commissioner of Land Administration is concerned.

5. In the present case, the award is less than Rs.10 lakhs. Therefore, under the notification contained in G.O.Ms.No.2003 dated 13.12.1984 or even under the subsequent G.O., the award required approval of the District Collector. As per Section 3(c), the expression Collector means the Collector of a district, and includes Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act. The Special Tahsildar has been appointed to perform the function of a Collector. However, as per the first proviso to Section 11(1) read with the notification issued by the Government, it is apparent that the expression District Collector as indicated in such notification under Section 11(1) first proviso is obviously different from the expression Collector. In other words, even though a Special Tahsildar is a Collector for the purpose of the Land Acquisition Act, for the purpose of taking approval under Section 11(1) (proviso) such Collector is not the appropriate authority, but the District Collector is the appropriate authority. The District Collector cannot mean the Land Acquisition Collector for the aforesaid purpose.

6. It is contended by the counsel appearing for the State, which is indicated in the counter affidavit filed on behalf of the respondents, that the award proceedings had been approved by the District Revenue Officer, Salem, based on the instructions given by the Government in letter No.86973/C.Spl.2/92-10 dated 23.11.1994 (G.O.Ms.No.1027, Revenue dated 25.9.1992). Since as per the notification it is for the District Collector to accord prior approval, the so called approval given by the District Revenue Officer is not valid. On this ground alone, since there is no prior approval as envisaged under Section 11(1)(first proviso), the award itself appears to be vitiated and liable to be struck down.

7. The provisions contained in Section 11(1)(proviso) have been held to be mandatory in a series of decisions including the decision of the Supreme Court reported in 1994(5) SCC 686 (STATE OF UTTAR PRADESH AND OTHERS v. RAJIV GUPTA AND ANOTHER). In the said decision, it was observed as :

 . . . Section 11 postulates of conducting an enquiry and making the award by the Collector. The first proviso envisages that no award shall be made by the Collector under sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government

may authorise in this behalf. It is common knowledge that exercising the power under the first proviso, the appropriate Government made rules or statutory orders or instructions whatever be the nomenclature, they have statutory operation giving authorisation to the Land Acquisition Collector to make an award up to a particular pecuniary limit without prior approval either of the appropriate Government or an officer authorised by the appropriate Government in that behalf. If the award exceeds the limit, prior approval of the State Government or authorised officer is mandatory. Any award made in violation thereof, renders the award non est and void as it hinges upon the jurisdiction of the Land Acquisition Collector of Officer. No doubt, Mr. Markandeya is right that the State had not produced before us rules or orders issued under the first proviso to Section 1 1 that the Land Acquisition Officer shall not make an award exceeding one crore of rupees without prior approval of the Commissioner, namely, Commissioner,Board of Revenue. But nonetheless, there is a statutory inhibition by first proviso to Section 11 that the prior approval either of the appropriate Government or of an officer which the appropriate Government authorises in that behalf, is mandatory for making an award. It is a condition precedent. . . .

8. Similar view has been expressed by this High Court in 1992 MLJ 4 69 (M.D. GOVINDARAJAN AND OTHERS v. STATE OF TAMIL NADU, REPRESENTED BY ITS COMMISSIONER AND ANOTHER) and W.A.No.1808 of 1999 disposed of on 23.3.2000.

9. In the absence of any prior approval by the approval authority, as envisaged under Section 11(1) proviso read along with the statutory notification issued by the Government, the award has to be held to be non est. The letter issued by the Government cannot have the effect of modifying or nullifying the statutory notification issued by the Government declaring the District Collector and the Commissioner as the appropriate authorities as envisaged under Section 11(1)(proviso). Even assuming that the District Revenue officer was the appropriate authority to grant prior approval, in the present case, the materials produced by the petitioners as well as on behalf of the Government would indicate that the award was made on 7.7.1995 by the Collector and signed by the Land Acquisition Officer on 25.7.1995, whereas, the so called approval by the District Revenue Officer was accorded on 19.8.1995. In other words, there was no prior approval, even by the District Revenue Officer.

10. It is the contention of the Special Government Pleader that only a draft award has been signed by the Land Acquisition Officer and it has been sent for prior approval and only after obtaining approval on 19.8.1995, the award was declared/published on 22.8.1995. Except the bald submission, there is no material in support of such contention, which is accordingly rejected.

11. Next is the question of limitation in making the award. As per Section 11-A of the Act, if declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award is required to be made within a period of two years from the date of commencement of such amended Act. As per the Explanation, while computing the period of

two years, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court is required to be excluded.

12. In the present case, it appears that stay had been granted in all the previous matters on 23.4.1985 and the writ petitions were dismissed on 25.1.1994 and subsequently the writ appeals were dismissed on 24.9.1997. Considering the period during which stay order had remained operative, it cannot be said that the award, which was made on 7 .7.1995 or even on 22.8.1995, was made after the stipulated period of two years. Therefore, this contention cannot be accepted.

13. Since the first contention is accepted, the writ petition is bound to be allowed. It would be open to the respondents to pursue further in the matter and to pass a fresh award, if time so permits as contemplated under Section 11-A. If it is found that there is no time to pass a fresh award, as necessary consequence, Section 6 Declaration would become invalid and as such it would be open to the respondents to initiate fresh proceedings for land acquisition.

14. With the above observation, the writ petition is allowed. No costs.

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To

1. Special Tahsildar (L.A)
Neighbourhood Scheme
Salem.

2. State of Tamil Nadu,
Rep. by its Commissioner &
Secretary to Government,
Housing and Urban Development
Department, Madras-9.

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